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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/653,023	09/01/2000	John Oliensis	13701	5540

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GARDEN CITY, NY 11530

EXAMINER
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KIBLER, VIRGINIA M

ART UNIT	PAPER NUMBER
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2623

DATE MAILED: 12/23/2003

7

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/653,023

Applicant(s)

OLIENSIS, JOHN

Examiner

Virginia M Kibler

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 8, 9, 11 and 14-16 is/are rejected.
- 7) ☒ Claim(s) 1-13, 15 and 16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Objections*

1. Claims 1-13, 15 and 16 are objected to because of the following informalities: "that incorporate" should be changed to "that incorporates" in claim 1, line 16; "shit data" should be changed to "shift data" in claim 8, line 30; "modifying" should be changed to "modify" in claim 15, line 11; "calculating" should be changed to "calculate" in claim 15, line 14; and "reconstructing" should be changed to "reconstruct" in claim 15, line 17. Appropriate correction is required.

Claims 2-7 and 16 depend on claim 1, and are therefore objected to.

Claims 9-13 depend on claim 8, and are therefore objected to.

### *Double Patenting*

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claim 1 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending Application No.

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09/652,820 in view of Irani (*Multi-Frame Optical Flow Estimation Using Subspace Constraints*).

Regarding claim 1 of the instant application, claim 1 of 09/652,820 covers equivalent subject matter except for the limitations the image data being one or more characteristics selected from the group consisting of points, lines, and intensities and dividing the successive images into smoothing windows. For the image data being one or more characteristics selected from the group consisting of points, lines, and intensities, intensity is inherent in an image, thereby the image data of 09/652,820 inherently consists of intensities. Dividing the images into smoothing windows is also known in the art as evidenced by Irani (Sect. 3.2, Para. 1). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified claim 1 of 09/653,023 in view of Irani to include dividing into smoothing windows in order to simplify computations (Sect. 3.2, Para. 2).

This is a provisional obviousness-type double patenting rejection.

### ***Claim Objections***

4. Claim 2 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

Claim 1 has been amended to include the limitations of claim 2. Claim 2 should be canceled.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-3, 5, 8, 9, 11, 15, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Oliensis (*Multiframe Structure from Motion in Perspective*, IEEE 1996).

Regarding claim 1, Oliensis discloses an image processing method for recovery of a scene structure and camera motion from successive image data comprising comparing the image data of a reference image to the image data of the successive image (Sect. 2, Para. 1), the successive image being taken by translating or rotating the camera with respect to the reference image (Sect. 2, Para. 1) and the image data being characteristic from points (Abstract), determining the image data shift for the successive image with respect to the reference image (Sect. 2, Para. 1), constructing shift data representation that incorporates the image data shifts for each image corresponding to the 3D structure and corresponding to the camera motion (Sect. 2), and determining the direction of the camera motion and the 3D structure from the shift data representation (Sect. 2.1).

Regarding claims 8 and 15, the arguments analogous to those presented above for claim 1 are applicable to claims 8 and 15. Oliensis discloses compensating for camera rotation after warping the reference image by an estimated translation value (Sect. 2.1, para. 2). Oliensis further discloses modifying the image shift representation by multiplying the image shifts by a predetermined factor which is dependent upon the image data (Page 79, col. 1), calculating a first

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representation and a second representation from the modified shift representation, the first representation corresponding to the 3D structure and the second corresponding to the camera motion (Sect. 2), and reconstructing the direction of the camera motion and 3D structure from the first and second representations (Sect. 2.1).

Regarding claims 2 and 9, Oliensis discloses the image data as points (Abstract; Sect. 2).

Regarding claim 3, Oliensis discloses the step of determining the image data shifts includes initially recovering and compensating for camera rotation (Sect. 2, Para. 2).

Regarding claims 5 and 11, Oliensis discloses computing a best rank-3 factorization of  $D_{CH}$  corresponding to motion and structure matrices using SVD (Page 79, Col. 2).

Regarding claim 16, Oliensis discloses the shift data representations comprising a first matrix corresponding to the 3D structure and a second matrix corresponding to the camera motion (Sect. 2, page 79).

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Oliensis (*Multiframe Structure from Motion in Perspective*, IEEE 1996) in view of Zhang et al. (6,614,429).

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Regarding claim 14, the arguments analogous to those presented above for claim 1 are applicable to claim 14. Oliensis discloses an algorithm for implementing the method of claim 1, but does not specify including a processor, video source, display means, a user interaction means, and a storage device. However, Zhang et al. ("Zhang") teaches that it is known to use a processor 102, a video source whose output is digitized into a pixel map by a digitizer, where the output is sent in electronic form via a system bus 106 for access by main memory 104, a display means 146, a user interaction means for selecting items on the display means 140, 142, and a storage device 116 in communication with the processor, where the storage device stores program code for programming the processor (Figure 1) for determining structure and motion. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the method for recovering scene structure and camera motion direction disclosed by Oliensis to include expressly stating including a processor, video source, display means, a user interaction means, and a storage device as taught by Zhang because it is well known in the art.

***Allowable Subject Matter***

9. Claims 4, 6, 7, 10, and 12-13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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***Response to Arguments***

10. Applicant's arguments with respect to claims 1-15 have been considered but are moot in view of the new ground(s) of rejection.

***Contact Information***

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Virginia M Kibler whose telephone number is (703) 306-4072. The examiner can normally be reached on Mon-Thurs 8:00 - 5:30 and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amelia Au can be reached on (703) 308-6604. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-0377.

*VK*

VK  
12/12/03

MEHRDAD DASTOURI  
PRIMARY EXAMINER

*Mehrdad Dastouri*